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LETTER FROM JUDGE GAYARRE.

THE CESSION OF LOUISANA

TO THE UNITED STATES.

To Hon. JOHN PERKINS, of Madison, member of the State Convention:

Dear Sir—You mentioned to me in conversation, a few days since, that the contemplated secession of Louisiana from the Union was looked upon as fraught with a peculiar difficulty, arising from the fact of its having been purchased by the United States, and that this difficulty would probably be forced on the consideration of the State Convention, which is to meet at Baton Rouge on the 23d of this month. You further did me the honor to desire the expression of my views to you on the subject. As it is one of general interest, I hope that you will give your sanction to the publicity of this address, which, otherwise, would only have been submitted to your private perusal.

It is, I know, the popular impression that the United States, in consideration of a certain sum of money paid to France for the purchase of Louisiana, acquired that province, with all the rights of unqualified, unconditional and absolute ownership in the same way that a portion of a sugar plantation is conveyed by one man to the other by a notarial act of sale. But a careful examination of that treaty of cession, with all the circumstances attending it, may somewhat modify that impression.

The United States, being informed of the retrocession of Louisiana to France by Spain, became extremely solicitous to obtain from that power the cession of New Orleans, with a limited adjacent territory, but sufficient to give them egress to the Gulf of Mexico. At first, Bonaparte, who was then the ruler of France, showed himself unfavorable to the attempted negotiation on the part of America. However, on the 10th of April, 1803, he said to his Ministers: "I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I have hardly recovered it when I must expect to lose it. But if it escapes from me, it shall one day cost dearer to those who oblige me (meaning England, then the mistress of the seas,) to strip myself of it, than to those to whom I wish to deliver it." Notwithstanding the stern necessity to which his iron will felt compelled to bend, he still clung to the much-prized acquisition, and still hesitated.

But a few days later, he said to one of the members of his Council: "Irresolution and deliberation are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede; it is the whole colony, without reservation. I know the price of what I abandon, and have sufficiently proved the importance that I attach to this province, since my first diplomatic act with Spain had for its object its recovery. I renounce it with the greatest regret." Then he added: "For a hundred years France and Spain have been incurring expenses for improvements in Louisiana, for which its trade has never indemnified them. Large sums, which will never be returned to the treasury, have been lent to companies and to agriculturists. The price of all these things is justly due to us. If I should regulate my terms according to the value of these vast regions to the United States, the indemnity would have no limits. I will be moderate in consideration of the necessity in which I am of making a sale." The high personage to whom Bonaparte was addressing these words, and who was to be his negotiator with the American Plenipotentiaries, made some general observations on the cession of the rights of sovereignty, and expressed his doubts as to whether the inhabitants of the territory could be [illegible] of sale or exchange. Bonaparte replied impatiently, with his usual abruptness: "You are giving me, in all its perfection, the ideology of the law of nature and of nations. But I require money to make war on the richest nation in the world. Send your maxims to the London market. I am sure that they will be greatly admired there, and yet no great attention is paid to them, when the question is the occupation of the finest regions of Asia." Notwithstanding this sarcastic remark, it will be seen that the Minister's objection, which Bonaparte seemed to treat so slightingly, sank in his mind, and that he subsequently provided for it in the treaty of cession. His sagacious intellect even anticipated another objection. "Perhaps," he continued, "it will also be objected that the Americans may be found too powerful for Europe in two or three centuries; but my foresight does not embrace such remote fears. Besides, we may hereafter expect rivalries among the members of the Union. The confederations that are called perpetual only last till one of the contracting parties finds it to his interest to break them, and it is to prevent the danger to which the colossal power of England exposes us, that I would provide a remedy." That great man evidently did not understand how a confederation of sovereign States could be maintained beyond the time when it would not be to the interest of any one of the parties to keep up the confederation, and much less when the majority became

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oppressive and tyrannical, and avowed the systematic design to wield the political power of the confederation with a view to a radical change in the fundamental principles on which it had been originally established. Hence, the fair presumption is, that if he had lived in our days, and had been a citizen of Louisiana, he would have been a Secessionist.

Be it as it may—on the 30th of April, 1803, the First Consul (Bonaparte), acting in the name of the French Republic, ceded forever to the United States, in full sovereignty, the territory of Louisiana, on which occasion he sententiously and prophetically said: "This accession of territory strengthens forever the power of the United States; and I have just given to England a maritime rival that will sooner or later humble her pride." What were the considerations of that treaty of cession, as expressed in the deed itself? Was it the payment of dollars and cents? No! The preamble says that it was "the desire to remove all cause of misunderstanding relative to objects of discussion in relation to the rights claimed by the United States in virtue of a treaty between Spain and the United States, concerning the navigation of the Mississippi," and also that it was "the willingness to strengthen the union and the friendship which had been happily re-established between the two nations," after a disagreement which had almost dragged them into a war.

What says Article 1 of the treaty? Does France cede Louisiana merely in consideration of the payment of a certain sum of money, as is done in all ordinary acts of sale and purchase? No; nothing of the kind is to be found in the body of the treaty of cession. Not one word of it! France expresses that she cedes Louisiana because "she desires to give to the United States a strong proof of her friendship." The French text says: "*une preuve remarquable*," and truly a "remarkable proof" it was!

The Article 7 stipulates for some commercial advantages, reciprocally beneficial to the commerce of France, Spain and the United States, and which are to last twelve years. That is all. Does all this sound like an ordinary act of sale?

After the treaty had been signed, and *Louisiana ceded*, France and the United States, "wishing to regulate definitely everything which had relation to said cession," entered into stipulations by which the Government of the United States engaged to pay to the French Government the sum of sixty millions of francs, independent of the sum which was to be fixed by another Convention for certain payments due by France to citizens of the United States.

Is it possible to read what precedes without coming to the conclusion that, in parting *regretfully* with Louisiana, the intention of the ruler of France was to make the best use of what he could not keep—that it was to strengthen the bonds of union between France and the United States, and to give them, as he took care to insert it in the treaty, "a remarkable proof of his friendship;" and lastly, that it was his policy to increase the rising and growing power of the United States, so as to oppose a mighty rival, within a few years, to what he called "the colossal power of Great Britain." As to the pecuniary part of the transaction, it seems to have been designedly postponed and kept out of sight. It became the object of a second and separate convention after the first had been completed. It was considered with reason, by Bonaparte at least, as a "mere indemnity"—as a reimbursement of expenses incurred for the preservation and improvements of Louisiana, and a repayment of the large sums expended for its colonization, but not as the value of the thing tranferred. "The price of all these things is justly due to us," observed Bonaparte. Wishing to give to the United States "a remarkable proof of his friendship," and to invigorate them into being a worthy and efficient adversary to Great Britain, he determined, as it were, to donate what he could not keep; and he did not ask for the value of Louisiana, because, to use his own words, "the indemnity would have had no limits." Therefore, he insisted only on what he thought France was entitled to—a mere reimbursement of advances made—an indemnity for expenses incurred for improvements in the colony. Was Louisiana sold as a common farm? Was it not ceded on the express stipulation of its being a remarkable testimonial of friendship? Setting aside the "letter which killeth and looking to the spirit which vivifieth," can this be regarded as a sale which was recorded as a testimonial of friendship, and for which no adequate equivalent was given? In the private transactions of life, when a thing is transferred for a price far inferior to its value, it may be called a sale, because it assumes that form; but it is in reality a disguised donation, particularly if it is stipulated in the deed that it is meant as an evidence of love, which is desired to be strengthened and perpetuated. Thus, in the case of the acquisition of Louisiana, the term "purchase," according to its common significance, in commercial language, is misapplied. It is, to be sure a cession of the province; and if it is not strictly a donation, it must be conceded that it is not strictly a sale. Many would even think that it partakes more of the nature of the former than of the latter.

But in support of this view of the question, there is a stronger point to present to your consideration. It is worthy of remark that, mindful of the objection which had been made to him by his minister about the right of *selling souls*, and which, apparently, had been scornfully received, as I have already stated, Bonaparte, according to the historical declaration of that same minister, (Barbe Marbois,) "prepared himself," the third article of the treaty of cession, which runs thus:

"The inhabitants of the said territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Was this selling Louisiana? Was this selling the Louisianians like cattle or other chattels? Were they becoming the property of the United States, to be disposed of as they pleased? Did the United States acquire an unqualified and unrestrained sovereignty over them? Could the United States resell Louisiana? No. It is evident that, by the treaty, France, through Bonaparte, made it imperative on the United States

to invest the Louisianians with the same sovereignty, to its full extent, which was possessed by their own citizens. The Louisianians were to be "incorporated in the Union as soon as possible." How could they be incorporated in a Union of sovereign States, except by becoming the citizens of a State or of States? Therefore the cession of Louisiana, which is commonly called a sale, was nothing else than the annexation of that province to the United States, either as a State or as divided into several States, according to the principles of the Federal Constitution, among which stands prominently the principle of equality among the members of the Confederation. That this was the understanding of Bonaparte is evident from the words which he uttered immediately after he had signed the treaty. He said, to the minister who had negotiated for him, "Let the Louisianians know that we separate ourselves from them with regret; that we stipulate in their favor everything that they can desire; and let them, hereafter, *happy in their independence*, recollect that they have been Frenchmen, and that France, in ceding them, has secured for them advantages which they would not have obtained from an European power, however paternal it might have been. Let them retain for us, sentiments of affection; and may their common origin, descent, language and customs, perpetuate the friendship."

Thus, he prided himself on having secured the independence of the Louisianians. How could that independence be obtained except by immediate annexation? We could not have been *independent* whilst the inhabitants of a Territory of the United States, and therefore dependent on them, no more than we could have been independent whilst remaining the inhabitants of a colony. Whilst the Louisianians were to remain in a transitory condition; whilst they were the inhabitants of a United States Territory; whilst they were incapable of protecting themselves—before their being invested with that sovereignty which became their birth-right by an express stipulation recognized as the supreme law of the land; whilst they were, to some extent, dependent on the United States—"en attendant"—(the words of the French text)—while they were waiting for their independence and their incorporation into the Union, France took special care to demand the guarantee that they should be maintained and protected in the free enjoyment of their liberty, property and the religion which they professed. Were they sold, then, to the United States according to the common acceptation of the word and the popular impression? Was it because the United States agreed to pay to France a certain sum of money which was a mere reimbursement of all her expenses in her former colony? As well might it be said that Texas sold herself to the United States because she stipulated the payment of a certain sum of money as a condition of her incorporation into the Union.

As long as Louisiana remained a territory, if its inhabitants had been robbed of any of their existing rights, if they had been oppressed in their persons and attacked in their property and religion, France, who, in virtue of the treaty of cession, had retained a right of supervision over the destinies of her former colony, would undoubtedly have had the right to interfere. But as soon as Louisiana was incorporated in the Union as a sovereign State, the protective-stipulation on the part of France ceased, because Louisiana was hereafter to look to herself for protection. The act of Congress authorizing the territory of Orleans, which had been carved out of the province of Louisiana, to form a State constitution, was not a voluntary, spontaneous and independent act, originating in the liberality or munificence of that body. It was no boon, no gift, no grant from the United States; it was simply the execution of the treaty of cession—the accomplishment of the generous will of France. It is therefore to the treaty of cession that Louisiana is to look back for her sovereignty, and not to the United States, who had merely bound themselves to accept that sovereignty, and to carry it into effect. If A cedes to B all his rights of property in a slave, and stipulates that B shall emancipate that slave as soon as possible, the act by which B emancipates that slave is really the act of A, and it is to A that the slave is indebted for emancipation, and not to B. Thus the act by which the United States incorporated Louisiana in the Union being prescribed by France, and being an unavoidable obligation on the part of the United States, was in reality the act of France. The United States were a mere ministerial agent chosen by France to secure that independence which she instructed her minister to inform the Louisianians that *she* had provided for them.

In support of the correctness of my views, I beg, dear sir, to refer you to the debates in Congress on the discussion of the bill providing for the carrying into effect of the treaty of cession. Mr. Pickering, of Massachusetts, opposed it in the Senate, on the ground of its unconstitutionality. Alluding to the third article of the treaty, he said, that it "stipulated the admission of a foreign country as an associate in the Union." He added, "I have never doubted the right of the United States to acquire new territory, either by purchase or conquest, and to govern the territory so acquired as a dependent province." But he denied that such was the case with Louisiana. He maintained, justly, that she was acquired as a State to which had been secured the right of independence and self-government, and not as a "dependent province." He farther said, "that if the United States failed to execute, within a reasonable time, the engagement assumed in the third article, the French Government would have the right to declare the whole treaty null and void."

Mr. Tracy, of Connecticut, followed in the wake of Mr. Pickering. He considered that the United States had acquired a State and not a Territory. "If done at all," he said, "it must be done by universal consent of all the States, or partners of our political association; and this universal consent, I am positive, can never be obtained to such a pernicious measure as the admission of Louisiana, of a world—and such a world!—into our Union. This would be absorbing the Northern States, and rendering them as insignificant in the Union as they ought to be, if by their own consent the new measure should be adopted." Northern insignificance! I avail myself of this opportunity to call your attention, by the way, to this apprehension of Northern insignificance, and Northern decline, compared with Southern

importance and Southern prosperity, as one of the secret springs of that deadly hostility and jealousy entertained by one section of the country against the other.

The whole drift of Mr. Adams's argument on the subject shows that he also thought that Louisiana was not acquired as a dependent province. Mr. Griswold, of Connecticut, said in the House: "It is clear that it was intended to incorporate the inhabitants of the ceded Territory in the Union by the treaty itself, or to pledge the faith of the nation that such an incorporation should take place within a reasonable time." He complained that it was the admission of a new partner in a firm without the consent of all the parties. "It was the incorporation of a *foreign nation* into the Union; it destroyed the perfect Union contemplated between the original parties, by interposing an alien and a stranger to *share the powers of government with them*." He lamented that "a new world was to be thrown into the scale to weigh down the influence which the Northern States might otherwise possess in the national councils." The other speakers on this side of the question, traveling over the same ground and paraphrasing the same arguments, asserted that if the United States could acquire territory, it was not to make it a part of the Confederacy as a State, but to hold it as a colony forever, or as a sort of subordinate dependency. [Gayarre's History of Louisiana, vol. 3.

"It has been said," observed one of the speakers "that the treaty does not in fact incorporate the people of the ceded territory into the Union, but stipulates that they shall be incorporated and admitted according to the principles of the Federal Constitution; or, in other words, the treaty only pledges the faith of the nation that such an incorporation shall take place. On this point I will observe that there is no difference in principle between a direct incorporation by the words of a treaty, and a stipulation that an incorporation shall take place, because if the faith of the nation is pledged in the latter case, the incorporation must take place, and it is of no consequence whether the treaty gives the incorporation, or produces the law which gives it."

Those on the other side, who thought that the United States had the Constitutional power to acquire Louisiana according to the stipulations of the treaty, did not differ, at least most of them, with their adversaries as to the interpretation put on the 3d Article. The paradoxical John Randolph, of Roanoke, was the only one who, as far as I am aware, interpreted the treaty with his characteristic eccentricity. He maintained that by the 3d Article, the Louisianians had only become entitled to the blessings of jury trial, liberty of conscience and a few other rights and immunities. But this construction of the treaty is evidently so erroneous that it scarcely deserves refutation, notwithstanding the respect due to the memory of its distinguished author.

From what precedes, it seems demonstrated that the treaty of cession had created the State of Louisiana, and opened to her the doors of admission into the Union. The United States had no discretionary power left them to reject their new associate, and to do aught beyond the arrangement of those formalities which were to attend her introduction into the bosom of their great sisterhood of sovereignties. It was not a dependent territory which they acquired, it was a State, or States. France had created the sovereignty of Louisiana, with the assent of the United States, who had assumed the merely ceremonial part of giving away the emblematic sceptre and the crown. But the pontiff who anoints the brows of royalty, only consecrates what already exists. Thus the act of Congress passed in 1811, to authorize the Territory of Orleans to form a Constitution and a State Government, and to enable it to be admitted into the Union on "an equal footing with the original States," was merely the discharge of an obligation, and only the evidence, the recognition, the consecration of the sovereignty already secured to Louisiana. That colony, I say, became a sovereign and independent State by the fiat of France, with the assent of the United States, as completely as the Thirteen Colonies of Great Britain had acquired their independence by their own achievements, backed by the assistance of that noble ally: and on the day of the admission of Louisiana into the Union, it was necessarily assumed that she also delegated, like the original States, those powers which the Federal Government was to exercise for the benefit of the whole Confederacy, and it necessarily followed that she could not have received from that Federal Government those which she retained. In that respect, she must accept no inferiority to the original States. She was not created by them, but incorporated into them, according to the principles of the Federal Constitution, in virtue of the stipulation of a benignant parent who emancipated her, and set her free forever from any human vassalage.

Now, it seems evident to my mind that the Constitution which became binding upon Louisiana on the day of her adoption, no more and no less than upon the original States, having been set aside by some of the contracting parties, in the name of a higher law invoked by them; that the equality of Louisiana in the Union having been disregarded; that her rights as one of its members having been trampled upon; that the property and lives of her citizens being put in peril by the action of a majority of her partners in the confederacy; that the Union itself being dissolved by systematic violations of the Constitution, and by the secession of one or more States, the sovereignty possessed by France in Louisiana, and transferred to the United States and to Louisiana herself on her incorporation into them, reverts in full to Louisiana and to the other States which were formed out of her territory, as soon as the United States no longer exist according to the principles of the Federal Constitution and the stipulations, the sense and spirit of the original compact. The sovereignty which emanated from the treaty of 1803, and which has been exercised since 1812, with the exception of certain delegated powers, can not perish, and must sit forever enthroned in Louisiana, whether the Union survives the present crisis, or is torn into premature destruction. Sovereignty once acquired can not be lost, except by complete and permanent subjugation, or by voluntary abdication.

Hoping that these crude remarks may be suggestive to your enlightened mind of thoughts more worthy of the subject, and more conducive to the facilitation of your labors in the Convention, I remain, with much respect, &c.,

CHARLES GAYARRE.

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